IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5934 of 2002
to
SPECIAL CIVIL APPLICATION No. 5945 of 2002
with
SPECIAL CIVIL APPLICATION No. 5457 of 2002

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ANANTABEN J KHEDIA & Ors.

Versus

THE COLLECTOR

Appearance:

1. Special Civil Applications No. 5934 to 5945 of 2002
MR DG CHAUHAN for Petitioners
MR DIPEN DESAI AGP for Respondent No. 1
MR YV SHAH for Respondent No. 2

2. Special Civil Application No. 5457 of 2002
DELETED for Petitioner
MR DIPEN DESAI AGP for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 04/08/2004

ORAL JUDGEMENT

Heard the learned advocates.

Rule returnable today. Learned AGP Mr. Desai and learned advocate Mr. Y.V Shah waive service of rule on behalf of the concerned respondents.

The petitioner, employees of the respondent no.2-Nadiad Municipality [hereinafter referred to as, "the Municipality"] challenge the order dated 30th May, 2002 made by the District Collector, Kheda in exercise of power conferred by Section 258 (1) of the Gujarat Municipalities Act, 1963.

It appears that the service of the petitioners who were the employees of the Municipality came to be terminated. Feeling aggrieved, the petitioners filed a Complaint No. 1 of 1999 before the Labour Court at Nadiad. Under the advice of the advocate, the Municipality by its Resolution dated 22nd October, 1999 agreed to reinstate the petitioners without payment of backwages. Pursuant to the said Resolution, the petitioners were ordered to be reinstated in service. Feeling aggrieved, one Shri Mahendrabhai B. Vagehla made a complaint to the District Collector alleging that the petitioners were reinstated in service because they did not belong to any reserved category. Pursuant to the said complaint, after hearing the Municipality, the District Collector made the impugned Order dated 30th May, 2002. By the impugned order, it has been held that the Municipality ought not to have compromised with the petitioners merely on the advice of the concerned advocate. It is further observed that in the event, the Municipality should lose before the Labour Court, the Municipality ought to have preferred appeal before the High Court.

The aforesaid reasoning of the District Collector is not sustainable. If the termination of service of the petitioners was made in irregular manner and if under the advice of the concerned advocate, the Municipality had decided to set-aside the orders of discharge and to reinstate the petitioners, the said act of the Municipality cannot be said to be wrong or improper or illegal. In such circumstances, the Municipality cannot be directed to wait until the Labour Court renders its decision in favour of the workmen.

In above view of the matter, these petitions are allowed. The impugned order dated 30th May, 2002 made by the District Collector, Kheda is quashed and set-aside. Rule nisi issued in each petition is made absolute. The parties shall bear their own costs.

Registry will maintain copy of this order in each petition.

{Miss R.M Doshit, J.}

Prakash*